

1 SYDNEY A. MENEES (D.C. Bar No. 1027544)
sydney.menees@usdoj.gov
2 United States Department of Justice
3 Environment & Natural Resources Division
Environmental Defense Section
4 601 D Street N.W., Suite 8000
Washington D.C. 20004
5 Telephone (202) 514-2398
6 Facsimile (202) 514-8865

7 *Attorney for Defendant*

8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

10
11 CITIZENS FOR PENNSYLVANIA'S
12 FUTURE, *et al.*,

13 Plaintiffs,

14 v.

15 ANDREW R. WHEELER, in his official
16 capacity as the Administrator of the United
17 States Environmental Protection Agency,

18 Defendant.
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Case No. 3:19-cv-02004-VC

**DEFENDANT'S ANSWER TO
PLAINTIFFS' COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

1 Defendant Andrew R. Wheeler, in his official capacity as the Administrator of the
2 United States Environmental Protection Agency (hereinafter "EPA"), responds to the
3 numbered allegations of the Complaint for Injunctive and Declaratory Relief (the
4 "Complaint") (Dkt. No. 1) filed by Plaintiffs Citizens for Pennsylvania's Future, Gasp,
5 Louisiana Bucket Brigade, and Sierra Club (collectively, "Plaintiffs") as follows:

6 INTRODUCTION

7 1. The allegations set forth in the first sentence of Paragraph 1 constitute
8 Plaintiffs' characterization of this action, to which no response is required. The remaining
9 allegations set forth in Paragraph 1 constitute conclusions of law, to which no response is
10 required. EPA avers that it has not yet undertaken the most recent technology review for 40
11 C.F.R. Part 63, Subpart L (Coke Oven Batteries) and 40 C.F.R. Part 63, Subpart CCCCC
12 (Coke Ovens: Pushing, Quenching, and Battery Stacks) under 42 U.S.C. § 7412(d)(6).
13 Additionally, EPA avers that it has not undertaken a risk review for Subpart CCCCC under 42
14 U.S.C. § 7412(f)(2). However, EPA finalized the risk review for Subpart L in 2005 and
15 denies that there is an outstanding obligation to conduct a risk review under 42 U.S.C. §
16 7412(f)(2) for Subpart L. The risk review for Subpart L was proposed at 69 Fed. Reg. 48338
17 (Aug. 9, 2004) and finalized at 70 Fed. Reg. 19992 (Apr. 15, 2005).

18 2. The allegations set forth in Paragraph 2 constitute Plaintiffs' characterization
19 of this action, to which no response is required.

20 JURISDICTION AND VENUE

21 3. The allegations set forth in the first sentence of Paragraph 3 constitute
22 Plaintiffs' characterization of this action, to which no response is required. The remaining
23 allegations set forth in Paragraph 3 constitute conclusions of law, to which no response is
24 required.

25 4. Regarding the allegations in Paragraph 4, EPA admits that Plaintiffs provided
26 EPA with written notice of intent to sue by letter with regard to the allegations in the
27 Complaint and that more than 60 days have elapsed since Plaintiffs gave such notice.
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1 14. The allegations set forth in Paragraph 14 characterize the Clean Air Act, which
2 speaks for itself and is the best evidence of its contents; to the extent the allegations are
3 inconsistent with the Act, EPA denies the allegations.

4 15. The allegations set forth in Paragraph 15 characterize the Clean Air Act, which
5 speaks for itself and is the best evidence of its contents; to the extent the allegations are
6 inconsistent with the Act, EPA denies the allegations.

7 16. The allegations set forth in Paragraph 16 characterize the Clean Air Act, which
8 speaks for itself and is the best evidence of its contents; to the extent the allegations are
9 inconsistent with the Act, EPA denies the allegations.

10 17. The allegations set forth in Paragraph 17 characterize the Clean Air Act, which
11 speaks for itself and is the best evidence of its contents; to the extent the allegations are
12 inconsistent with the Act, EPA denies the allegations.

13 18. The allegations set forth in Paragraph 18 characterize the Clean Air Act, which
14 speaks for itself and is the best evidence of its contents; to the extent the allegations are
15 inconsistent with the Act, EPA denies the allegations.

16 19. The allegations set forth in Paragraph 19 characterize the Clean Air Act, which
17 speaks for itself and is the best evidence of its contents; to the extent the allegations are
18 inconsistent with the Act, EPA denies the allegations.

19 20. The allegations set forth in Paragraph 20 characterize the Clean Air Act, which
20 speaks for itself and is the best evidence of its contents; to the extent the allegations are
21 inconsistent with the Act, EPA denies the allegations.

22 21. The allegations set forth in Paragraph 21 characterize EPA's 1999 Residual
23 Risk Report to Congress, which speaks for itself and is the best evidence of its contents; to the
24 extent the allegations are inconsistent with the Act, EPA denies the allegations. Additionally,
25 Paragraph 21 contains legal conclusions to which no response is required.

26 22. The allegations set forth in Paragraph 22 characterize the Clean Air Act, which
27 speaks for itself and is the best evidence of its contents; to the extent the allegations are
28 inconsistent with the Act, EPA denies the allegations.

1 30. The allegations in the first sentence of Paragraph 30 characterize an EPA
2 “classification” which speaks for itself and is the best evidence of its contents; to the extent
3 the allegations are inconsistent with such classification, EPA denies the allegations. The
4 allegations in the second sentence of Paragraph 30 characterize unspecified studies, which
5 speak for themselves and are the best evidence of their contents; to the extent the allegations
6 are inconsistent with those studies, EPA denies the allegations. The third sentence of
7 Paragraph 30 characterizes *Natural Res. Def. Council v. EPA*, 824 F.2d 1211, 1215 (D.C.
8 Cir. 1987) and S. Rep. No. 101-228, which speak for themselves and are the best evidence of
9 their contents.

10 31. The allegations set forth in the first sentence of Paragraph 31 characterize
11 EPA’s risk assessment, which speaks for itself and is the best evidence of its contents. The
12 allegations set forth in the second sentence of Paragraph 31 characterize 70 Fed. Reg. 19,992
13 (Apr. 15, 2005), which speaks for itself and is the best evidence of its contents; to the extent
14 the allegations are inconsistent with the case law and legislative history, EPA denies the
15 allegations.

16 32. The allegations in Paragraph 32 appear to characterize unspecified studies of
17 the effects of coke oven emissions, which speak for themselves and are the best evidence of
18 their contents; to the extent the allegations are inconsistent with those studies, EPA denies the
19 allegations.

20 33. The allegations in Paragraph 33 appear to characterize unspecified studies of
21 the persistence and bioaccumulation of coke oven emissions, which speak for themselves and
22 are the best evidence of their contents; to the extent the allegations are inconsistent with those
23 studies, EPA denies the allegations.

24 34. The allegations set forth in Paragraph 34 characterize EPA’s, the National
25 Institute of Health’s, and the World Health Organization’s documents, which speak for
26 themselves and are the best evidence of their contents; to the extent the allegations are
27 inconsistent with those documents, EPA denies the allegations.

1 35. The allegations set forth in Paragraph 35 characterize EPA documents and
2 federal regulations, which speak for themselves and are the best evidence of their contents; to
3 the extent the allegations are inconsistent with the documents and regulations, EPA denies the
4 allegations.

5 36. The allegations set forth in Paragraph 36 characterize Clean Air Act
6 regulations, which speak for themselves and are the best evidence of their contents; to the
7 extent the allegations are inconsistent with those regulations, EPA denies the allegations.

8 37. The allegations set forth in Paragraph 37 characterize unspecified EPA
9 documents and the Clean Air Act, which speak for themselves and are the best evidence of
10 their contents; to the extent the allegations are inconsistent with those documents and the Act,
11 EPA denies the allegations.

12 38. Coke Oven Batteries

13 a. EPA denies the factual allegations in this Paragraph. EPA avers that it
14 promulgated National Emission Standards for Hazardous Air Pollutants for Coke Oven
15 Batteries in 1993 and amended the rule in 1994. *See* 58 Fed. Reg. 57898 (Oct. 27, 1993); 59
16 Fed. Reg. 1992 (Jan. 13, 1994). EPA further avers that the 2005 action Plaintiffs reference in
17 their Complaint is the risk and technology review under 42 U.S.C. §§ 7412(d)(6) and
18 7412(f)(2), as well as amendments to the promulgated standard.

19 b. This paragraph contains legal conclusions to which no response is required.

20 c. Admitted.

21 d. This paragraph contains legal conclusions to which no response is required.

22 e. This paragraph contains legal conclusions to which no response is required.

23 f. Admitted.

24 g. Admitted.

25 39. Coke Ovens: Pushing, Quenching, and Battery Stacks

26 a. EPA admits the first sentence. In the second sentence, EPA admits the
27 standards were challenged and denies the characterization remaining in this sentence. 70 Fed.
28 Reg. 44285 speaks for itself and is the best evidence of its contents.

1 b. This paragraph contains legal conclusions to which no response is required.

2 c. Admitted.

3 d. This paragraph contains legal conclusions to which no response is required.

4 e. This paragraph contains legal conclusions to which no response is required.

5 f. Admitted.

6 g. This paragraph contains legal conclusions to which no response is required.

7 h. Admitted.

8 i. This paragraph contains legal conclusions to which no response is required.

9 ALLEGATIONS OF INJURY

10 40. EPA lacks knowledge or information sufficient to form a belief about the truth
11 of the allegations set forth in Paragraph 40 and therefore denies the allegations. Paragraph 40
12 also contains legal conclusions to which no response is required.

13 41. EPA lacks knowledge or information sufficient to form a belief about the truth
14 of the allegations set forth in Paragraph 41 and therefore denies the allegations.

15 42. EPA lacks knowledge or information sufficient to form a belief about the truth
16 of the allegations set forth in Paragraph 42 and therefore denies the allegations.

17 43. EPA lacks knowledge or information sufficient to form a belief about the truth
18 of the allegations set forth in Paragraph 43 and therefore denies the allegations. Paragraph 43
19 also contains legal conclusions to which no response is required.

20 44. EPA lacks knowledge or information sufficient to form a belief about the truth
21 of the allegations set forth in Paragraph 44 and therefore denies the allegations. Paragraph 44
22 also contains legal conclusions to which no response is required.

23 45. EPA lacks knowledge or information sufficient to form a belief about the truth
24 of the allegations set forth in Paragraph 45 and therefore denies the allegations. Additionally,
25 Paragraph 45 contains legal conclusions to which no response is required.

26 46. EPA lacks knowledge or information sufficient to form a belief about the truth
27 of the allegations set forth in Paragraph 46 and therefore denies the allegations. Additionally,
28 Paragraph 46 contains legal conclusions to which no response is required.

48. EPA lacks knowledge or information sufficient to form a belief about the truth of the allegations set forth in Paragraph 48 and therefore denies the allegations. Additionally, Paragraph 48 contains legal conclusions to which no response is required.

49. EPA restates and incorporates by reference its responses to Paragraphs 1-48 above.

50. Paragraph 50 contains legal conclusions to which no response is required.

Violations of § 7412(f)(2) of the Clean Air Act

53. Paragraph 53 contains legal conclusions to which no response is required.

The remaining paragraphs of Plaintiffs' complaint consist of Plaintiffs' request for relief, which does not require a response.

EPA denies each and every allegation of the complaint not specifically admitted in its responses to the Complaint's specific Paragraphs, set forth above. To the extent that any allegations of fact in the Complaint remain unanswered, EPA denies such allegations.

1. Plaintiffs lack standing as to some or all of the claims.
2. Plaintiffs failed to state a claim on some or all their allegations.
3. This court lacks subject matter jurisdiction to hear one or all of Plaintiffs' allegations.

Date: June 14, 2019

/s/ Sydney A. Menees

SYDNEY A. MENEES (D.C. Bar No. 1027544)

United States Department of Justice

Environment & Natural Resources Division

Environmental Defense Section

601 D Street N.W., Suite 8000

Washington D.C. 20004

sydney.menees@usdoj.gov

Telephone (202) 514-2398

Attorney for Defendant

Of counsel:

Emily Seidman

Office of General Counsel

U.S. Environmental Protection Agency